

STATE OF MICHIGAN
COURT OF APPEALS

PBJ PROPERTIES, L.L.C.,

Plaintiff-Appellee,

v

ARBY'S, INC., and FORSH, INC.,

Defendants-Appellants.

UNPUBLISHED

December 26, 2000

No. 213044

Wayne Circuit Court

LC No. 96-628073-CZ

Before: Markey, P.J., and Murphy and Collins, JJ.

PER CURIAM.

Following a bench trial, the circuit court entered judgment in plaintiff's favor and ordered defendants to rebuild a wall or other adequate barrier between the parties' adjacent commercial properties. Defendants appeal as of right. We affirm.

Defendants first argue that the trial court should have dismissed plaintiff's action because any alleged agreement to maintain a wall was not in writing and was, therefore, unenforceable under the statute of frauds, MCL 566.108; MSA 26.908. We disagree. Plaintiff's assertion of promissory estoppel, resting on defendants' oral promise, operates to avoid the statute of frauds. *McMath v Ford Motor Co*, 77 Mich App 721, 725; 259 NW2d 140 (1977).

Defendants next argue that promissory estoppel does not apply because the statements made by defendants' representative at public hearings did not create a clear and definite obligation on the part of defendants to maintain the wall forever. Promissory estoppel arises in equity when (1) there is a promise (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee (3) which in fact produces reliance or forbearance of that nature (4) under circumstances such that the promise must be enforced if injustice is to be avoided. *Martin v East Lansing School Dist*, 193 Mich App 166, 178; 483 NW2d 656 (1992); *McMath*, *supra* at 725. Promissory estoppel requires reasonable reliance, and reliance is reasonable only if it is induced by an actual, clear, and definite promise. *State Bank of Standish v Curry*, 442 Mich 76, 84-85; 500 NW2d 104 (1993); *Martin*, *supra*. The existence and scope of the promise are questions of fact that will not be overturned unless clearly erroneous. *State Bank of Standish*, *supra* at 84. To ascertain the existence and scope of a promise, courts use an objective standard to analyze the words and

actions of the transaction as well as the nature of the relationship between the parties and the circumstances surrounding their actions. *Id.* at 86.

Here, the trial court did not clearly err in finding that a clear and definite promise was made by defendants to maintain the wall in question as long as the Arby's restaurant was still in operation. Trial testimony showed that defendants' representatives made representations during public meetings of the planning commission that the existing wall would be repaired or replaced, and maintained. Moreover, defendants should reasonably have expected to induce action of a definite and substantial character on the part of those to whom the promise was directed. Indeed, the evidence indicates that the reason the promise was made was so that interested parties would withdraw their objections to defendants' proposed site plan. Further, the subject wall was included in the revised site plan approved by the city council and defendants continued to maintain the wall for approximately five years after the restaurant was built.

We reject defendants' alternative argument that plaintiff, as a subsequent purchaser of the adjacent property, lacks standing to enforce defendants' promise. Promissory estoppel has been defined to include reasonable reliance by a third person:

A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee *or a third person* and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. [1 Restatement Contracts, 2d, § 90, p 242 (emphasis added).]

See also 28 Am Jur 2d, Estoppel & Waiver, § 128, pp 548-549. Here, it was foreseeable that plaintiff, a prospective subsequent buyer of the property adjacent to the Arby's restaurant who attended the meetings at which the promise was made, would rely on defendants' promise. Plaintiff's owner, Paul Jocks, had plans to purchase the building and ultimately did so. Jocks testified that he may have negotiated to purchase the adjacent property for a different price had he known that the wall was not going to be maintained. Under the circumstances, the trial court did not clearly err in concluding, as an equitable matter, that the promise must be enforced to avoid injustice.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Jeffrey G. Collins